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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CrR.A.No.378 of 2001.

APPELLANT : Baratram, S/o Chamaru Kond,
Age 33 yrs. R/o Village Tendudhar
P.S.Sarayapali, Distt Mahasamund (C.G.)

Versus

RESPONDENT : State of Chhattisgarh.

Criminal Appeal U/s. 374 (2) Cr.P.C.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.378/.. **सन् 200 (**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

2-3-2007

Ku. Nirupma Bajpai, Advocate for the appellant.

Shri Sudhir Bajpai, Panel Lawyer for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 2-3-2001 passed by 2nd Additional Sessions Judge, Mahasamund in S.T. No. 235/2000, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

2. Case of the prosecution is that in the intervening night of 29th and 30th April, 2000, the accused and his wife Pilibai were sleeping in their rooms. His mother Lucky Bai and younger brother Ghanshyam were also sleeping in the house in their respective rooms. In the night, the accused-appellant committed murder of his wife Pilibai by pressing her neck. At about 2 - 2.30 a.m. in the night, he went to his mother, after waking her up informed her that he has committed murder of his wife. On hearing this, Lucky Bai came and saw that Pilibai was lying dead and blood was oozing from her nose. Lucky Bai informed Ghanshyam. Lucky Bai & Ghanshyam came and bolted the accused in the room. Ghanshyam went to the Police Station, Saraipali, lodged report Ex. P-3. The Station House Officer after

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registering the case under Section 302 of I.P.C., left for the scene of occurrence, prepared inquest Ex. P-1 on the body of Pilibai. Site plan Ex. P-4 of the place of occurrence was prepared. The body of Pilibai was sent for post mortem to the Community Health Centre, Saraipali where Dr. V.A.K. Koshariya (P.W. 11) conducted post mortem and prepared post mortem report Ex. P-6. He opined that mode of death is due to asphyxia on account of throttling. The doctor noticed that there were multiple abrasions over the front side of neck in the size of ½ cm x 2 cm x ½ cm x 1 cm, they were reddish in colour. Thumb impression was present on the right side of neck in the size of 1" x ½". There were bruises and abrasions over the frontal neck below thyroid cartilage ecchymosis present under thumb and fingers impressions, all internal organs were congested.

3. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Saraypali who in turn committed the case to the Sessions Judge, Raipur from where the learned Addl. Sessions Judge, Mahasamund received the case on transfer for trial. The prosecution examined 15 witnesses in order to establish the charge against the accused-appellant. Statement of accused-appellant was recorded under Section 313 of Cr.P.C. in which the accused-appellant denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

4. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused-appellant as aforementioned.

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5. We have heard Ku. Nirupma Bajpai on behalf of the accused-appellant and Shri Sudhir Bajpai on behalf of the State.

6. As far as homicidal death of Pilibai is concerned, P.W. 1 Bhojram, P.W. 2 Ghanshyam –younger brother of the accused, P.W. 3 Lucky Bai-mother of the accused, P.W. 4 Lakhanlal and P.W. 5 Narhari, all of them have stated that when they went to the room of the accused-appellant, he was present there, he stated that he has committed murder of his wife. P.W. 11 Dr. V.A.K. Koshariya has stated that on 30-4-2000, he conducted post mortem on the body of Pilibai and noticed that clotted blood was present on nostril, there were multiple abrasions on the left side of thyroid cartilage, reddish in colour, thumb impression was present on the left side of neck in the size of 1" x ½", there were signs of 4 tips of fingers in the size of 1" x ½", ecchymosis thyroid cartilage was present. The throat and windpipe was congested and clotted blood was present. He opined that the death was due to asphyxia on account of throttling. Therefore, in view of the medical evidence of Dr. Koshariya and extra-judicial confession made by the accused before the witnesses mentioned above, it is established that the death of Pilibai was homicidal in nature.

7. As far as involvement of the accused-appellant in crime in question is concerned, Ku. Bajpai argued that it has come in the evidence of the mother and other witnesses that mental condition of the accused-appellant was not normal, he was taking treatment from Baiga, therefore, on account of abnormal mental condition the accused-appellant committed crime, as such, he is entitled for benefit under Section 84 of I.P.C. P.W. 1 Bhojram has stated that the village Kotwar Lakhan Lal called him in the night and informed that Barat Ram has committed murder of his wife by

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pressing her neck. When he went to the house of accused-appellant Barat Ram, door of the room was closed. On enquiry by the Kotwar, the accused-appellant informed from inside of the room that he has committed murder of his wife by pressing her neck. The accused-appellant was in the room. P.W. 2 Ghanshyam- younger brother of the accused has also stated that the accused made extra-judicial confession that he has committed murder of his wife. P.W. 3 Lucky Bai, P.W. 4 Lakhanlal and P.W. 5 Narhari have also stated that the accused-appellant made extra-judicial confession before them that he has committed murder of his wife. Therefore, involvement of the accused-appellant in committing murder of his wife is established.

8. Now, coming to the argument advanced by the learned counsel for the appellant that mental condition of the accused-appellant was abnormal, therefore, he is entitled for benefit of Section 84 of I.P.C., in order to attract the provisions of Section 84 of I.P.C. it is necessary that at the time of commission of the crime, the accused on account of unsoundness of mind was incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. As per the provisions of Section 105 of Indian Evidence Act, 1872, the burden was on the accused to prove that at the time of commission of crime, he was suffering from unsoundness of mind. In the matter of **T.N. Lakshmaiah – v- State of Karnataka** reported in **2001 SC 3828**, it has been held that the burden of proving the exception under Section 84 is on the accused. Similar is the judgment of the Apex Court in the matter of **State of M.P. – v- Ahmadulla** reported in **AIR 1961 SC 998** in which it has been held that the burden of proving that the mental condition of the accused was not

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proper at the time when the said offence was committed lies on the accused in view of Section 105 of the Evidence Act. Therefore, in order to seek protection of Section 84 of the I.P.C. the accused was required to bring on record that at the time of commission of crime, he was suffering from unsoundness of mind. In the present case, P.W. 3 Lucky Bai-mother of the accused-appellant has stated that 15 days before the date of incident, mental balance of the accused was not proper, before that he was mentally sound, at the time when the police came, the mental balance of the accused was not proper. P.W. 4 Lakhanlal has also stated that the mind of the accused was not normal, he used to take treatment from Baiga. Apart from that, there is no evidence available on record to show that the accused-appellant was suffering from the unsoundness of mind at the time of commission of the crime. Even the Investigating Officer J.R. Nair (PW-4) has stated that he was not informed that the mind of the accused was not normal, even it was not informed to him that the accused was singing song when persons reached to the spot. Therefore, nothing has been brought on record by the accused-appellant in order to establish that at the time of commission of the crime he was suffering from unsoundness of mind and he was not capable to understand what is wrong and what is right. Even in the statement under Section 313 of Cr.P.C. the accused has simply denied the material appearing against him. He has not stated that he was suffering from unsoundness of mind at the time of commission of the crime. Therefore, the accused-appellant has not been able to discharge the burden which was on him under Section 105 of the Indian Evidence Act to establish that he was suffering

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	from unsoundness of mind, as such he is not entitled for the benefit under Section 84 of I.P.C. 9. In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed. **Sd/-** **L.C. BHADOO** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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